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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,849	11/02/2001	Mark Alan Burazin	14,923E	7622

23556 7590 11/27/2002

KIMBERLY-CLARK WORLDWIDE, INC.
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NEENAH, WI 54956

EXAMINER

HUG, ERIC J

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 11/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

A9-5

Office Action Summary	Application No. 10/015,849	Applicant(s) BURAZIN ET AL.	
	Examiner Eric Hug	Art Unit 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-22, 24-41, 44-53 and 57-63 is/are allowed.
- 6) ☒ Claim(s) 23, 42, 43 and 54-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description: 27 (absorbent tissue product), 145 (primary pattern), 64 (circular primary pattern).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "44a" and "44b" have both been used to designate the same upper warp in Figure 8.

Figure 9 is objected to because it fails to show the contrast between the white floats and the gray intermediate knuckles and shutes as described in the specification on page 27. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informality:

In the paragraph on page 11, lines 13-21, the phrase "In the production of endless fabrics, the normal orientation of warps and shutes, according to common weaving terminology, is reversed..." is not a factual statement. The orientation of the warps and shutes is consistent with conventional terminology. The reverse terminology is true regarding the subject matter of copending U.S. Application No. 10/015,837, but not so for this particular application.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 23, 42, and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding 23, the phrase "wherein the transition region is filled" is undefined. It is uncertain what is meant by "filled". Regarding claim 42, the phrase "non-macroscopically monoplanar" is undefined. It is uncertain what feature of the fabric structure is considered to be non-macroscopically monoplanar. Regarding claims 43, the phrase "macroscopically monoplanar" is undefined. It is uncertain what feature of the fabric structure is considered to be macroscopically monoplanar.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 54-56 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 100-102 of copending Application No. 10/015,837. Although the conflicting claims are not identical, they are not patentably distinct from each other, because the tissues that are formed in the two applications have the same structure. Both are made with fabrics having alternating parallel elevated and depressed regions structured so that at a transition region between two background regions, a first elevated region in a first background region becomes a second depressed region in a second background region, and a first depressed region in the first background region become a second elevated region in the second background region.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

Claims 1-22, 24-41, 44-53 and 57-63 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art does not disclose a method of making tissue comprising transferring a wet tissue web to a sculpted tissue-making fabric having alternating parallel nonwoven raised elements and depressed regions, whereby at a transition region between two background regions, a first raised element in a first background region becomes a depressed region in a second background region and a first depressed region in the first background region become a second raised element in the second background region. The prior art does not disclose such a structure for a nonwoven tissue-making fabric. Similarly, the prior art does not disclose or suggest a tissue product made from the claimed fabric. The claimed fabric imparts a surface structure and texture that distinguishes the claimed tissue from prior art tissues, while also providing a tissue with uniform density instead of a tissue with compacted regions.

Prior art fabrics for making tissue webs which have nonwoven surfaces typically comprise resinous structures elevated from the surface of a base fabric forming a pattern, such as the fabrics discussed in patents by Trokhan, Phan, or Gaisser. None of these prior art fabrics have surfaces resembling the surface of the claimed sculpted fabric. These prior art fabrics also result in papers having a different surface structures and different localized densities.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Kajander (US 5,462,642) disclose a forming fabric having a woven base and a resinous patterned structure.

Graf (US 5,837,102) discloses perforated and embossed sheet forming fabric having rounded projections and depressions at the surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Hug whose telephone number is 703 308-1980. The examiner can normally be reached on Monday through Friday, 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9310 for regular communications and 703 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0651.


jeh
November 22, 2002


STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700